

Disclosure of information in rating disputes

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Introduction



- Topics to be covered:
 - Ratepayers' obligations
 - The VO's obligations
 - The position of the Tribunal

Ratepayers' obligations: the FOR regime

- Schedule 9 to the 1988 Act
- FoRs provided for in para 5. VO can serve FoR requesting:
 - Specified information
 - Which VO reasonably believes will assist him in carrying out functions
- Ratepayer must comply. Offence knowingly or recklessly to make a false return

“Reasonably believes will assist”

- *Watney Mann v Langley* [1966] 1 QB 457
 - Test (under 1925 Act): what would a prudent and reasonable VO consider as necessary to maintain an accurate list?
 - Will the disclosure “promote accuracy” of the rating list?
 - Note – now VO only needs reasonably to believe the disclosure will assist him
- *Allchin v Williamson (VO)* [1966] RA 297
 - Not reasonable to require ratepayer to provide info the VO could find out by way of a survey using his power of entry

Penalties for non-compliance

- Para 5A of Sch 9
- Failure to provide within 56 days: £100 fine
- VO must serve a penalty notice
- If failure to provide within 21 days beginning with the day the penalty notice is served:
 - £100 fine; and
 - £20 per day for each day failure continues thereafter

Penalties for non-compliance

- Total penalties under all of above are capped at higher of:
 - £500
 - RV of the hereditament for which the notice was served
- RV is “for” date of service of penalty notice ... not “on” date of service
 - Suggests increase in RV for the day in question might retrospectively increase the cap ...

The VO's powers

- Para 5B – VO can mitigate or remit penalties
- Rating Manual gives guidance (Vol 2 section 15)
- Remission/mitigation considered where:
 - Wrong name or address on FOR/PN
 - Person no longer holds the information and gives explanation
 - Information particularly complex so that longer time required to produce it
 - Personal circumstances

Appeals

- Para 5C of Schedule 9
- Appeal rights lie to the VTE
- Must be made within 28 day period beginning with the day the penalty notice is served.
- £20 per day penalties still accrue pending determination ... but VO can't recover any sums until final determination of appeal

Appeals: grounds

- Only two grounds of appeal:
 - (1) Ratepayer had a reasonable excuse for non-compliance
 - (2) Information requested is not in the possession or control of the ratepayer
- If either ground made out, VTE can either remit or mitigate the penalty

“Reasonable excuse”

- *Bournemouth & West Hampshire Water Plc v Central Valuation Officer* [2008] RVR 102
 - Not a reasonable excuse that the ratepayer did not have the info in the requested format
 - But a reasonable excuse not to comply with a request where it can be shown that the VO would not get reasonable assistance from the information
 - Tricky post-*Garton v Hunter*, but not impossible ...
 - Refusal by the VO to give a confidentiality undertaking?

The VO's obligations

- What are the limits on a VO's power to use information it holds?
- The VOA's view: s. 18 Commissioners of Revenue and Customs Act 2005:

“Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs”

The VO's obligations

- S. 18(2) gives a number of exceptions. These include:
 - Purposes of a HMRC function
 - Civil proceedings where HMRC has functions
 - Criminal investigation/proceedings where HMRC has functions
 - Pursuant to a court order
 - By consent of person(s) to whom the info relates

Does CRCA 2005 apply to the VOA?

s. 18 binds “R&C officers”

s. 18 defines these as:

- (i) a Commissioner,
- (ii) an officer of Revenue and Customs,
- (iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or
- (iv) a member of a committee established by the Commissioners

s. 2 states “officers of HMRC” appointed by, and subject to direction of, Commissioners whether acting on Commissioners’ behalf of as an officer of HMRC

Does CRCA 2005 apply to the VOA?

- VOs not Commissioners
- Are VOs “officers of HMRC”?
 - Appointed by Commissioners (s. 61 LGFA) ... but don’t have to be officers of Commissioners (c.f. GRA 1967)
 - Not subject to direction on contents of List from HMRC
Commissioners – subject to free-standing statutory duty under LGFA 1988 independently of HMRC
- VOs do not appear therefore to be subject to CRCA 2005

Does CRCA 2005 apply to the VOA?

- S. 63A LFGA 1988
- Empowers VOs to disclose “R&C information” (defined as info held under s. 18 CRCA) to the SoS, Welsh Ministers, and BAs for rating purposes
- Seems to assume VOs are officers of HMRC ... but far from clear
- Point remains to be tested.
 - May need to seek free-standing undertakings from VO where info is confidential: “belt and braces”

Commercially sensitive information

- Note the Rating Manual on R&E valuations:

“Although there is no longer any statutory restriction on the use of receipts and accounts information the VOA recognises legitimate concerns that such information is often sensitive and of a confidential business nature.

Without prejudice to the requirements of the law, and the VO's statutory duty, the VOA has therefore adopted a policy of ensuring all staff are made fully aware such information should not be disclosed to third parties other than in restricted circumstances and the use of such information in tribunal proceedings should be kept to a minimum and only referred to as a last resort.”

The Tribunals

- Recognition by VTE and UT(LC) of need to adopt data-sensitive processes
- Balance of open justice, on the one hand, and reasonable confidentiality/access to justice on the other
- Both the VTE and UT(LC) empowered to prohibit disclosure or publication of information or documents:
 - Rule 16 of the VTE Procedure Rules
 - Rule 15 of the UT(LC) Procedure Rules

The Tribunals

- *Lidl (UK) GmbH v Ryder (VO)* [2014] RA 23
- Ratepayer invited by Tribunal to disclose turnover figures, on condition they weren't mentioned in the decision.
- Tribunal also made a Rule 15 order to prohibit onward disclosure/publication

The Tribunals

- VTE Procedure Regs Rule 16(2):
 - VTE has power to prohibit disclosure of info provided by one party to the other party in proceedings
 - Only where
 - disclosure likely to cause serious harm
 - Proportionate in the interests of justice
 - Can permit disclosure to the other party's representatives only



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